REMARKS

Claims 30-33, 36-39, 41-45, 47-50, 57, 60-64, 114-118, and 121-145 are pending in the present application. Claims 30-33, 36-39, 41-45, 47-50, 114-118, and 121-145 are withdrawn from consideration. Claims 57 and 60-64 stand rejected. Applicants herein amend claims 57 and 60-64. New claims 146-157 are added. No new matter is added. As a result, claims 57, 60-64, and 146-157 are pending. Further examination and review in view of the amendments and remarks below are respectfully requested.

Election/Restriction

Applicants note the Examiner's restriction and elect to prosecute claims 57 and 60-64. Claims 30-33, 36-39, 41-45, 47-50, 57, 60-64, 114-118, and 121-145 are withdrawn from consideration.

Claim Rejections 25 U.S.C. § 103(a)

In the Office Action the Examiner rejected claims 57, 60-64 as obvious over U.S. Patent No. 5,619,247 ("Russo") in view of U.S. Patent No. 5,734,720 ("Salganicoff"). Applicants traverse the Examiners rejection.

With respect to claim 57, the Examiner admitted that Russo "is silent on a criteria based on popularity." (Office Action, dated April 4, 2007, at p. 4) and relied on Slaganicoff to cure Russo's deficiencies. The Examiner then stated that "Salganicoff teaches using national popularity as a criterion in suggesting programming to a user (col. 48, para. 27 – 45) …[and] (col. 4, para. 60-64)."(Office Action, at p. 4). Applicants respectfully disagree with the Examiner's characterization of Salganicoff. A portion of the above-referenced portion of Salganicoff states:

> Those skilled in the art will also appreciate that the basic agreement matrix described above can be generalized to include various weightings such as national popularity, customer requests for movies, customer requests for times, data on viewership by category and time, and the like. The present invention is also flexible enough to allow the scheduler to keep regular shows at regular times to draw customers while giving the customers the options to select the "best" of what is available on the other channels. In such a scenario, one could mix network television with special cable programming as well as video on demand. Of course, each customer could

also have one or more of his/her own "customized" virtual channels showing his or her own requests.

According to Salganicoff, national popularity can be used as a criterion by an agreement matrix. This agreement matrix, is used in one embodiment, "for scheduling the *broadcast* of movies and other shows over a video distribution network which allows the simultaneous distribution of many channels from a head end to the set top multimedia terminals associated with many customers' television sets." (Salganicoff, col. 22 lines 45 – 50)(Emphasis added). According to Salganicoff, the agreement matrix can also be used to create "customized programming channels from all of the programming available at any time and *broadcast* the customized programming channels to groups of customers. The customer's set top multimedia terminal then creates "virtual channels" as a collection of the *received* programming data from one or more of the customized programming channels at any point in time for receipt on the customer's television. These *virtual channels are received* as an additional offering to the regular broadcast transmission and are customized to the customer's preferences." (Salganicoff, col. 3, lines 5 – 15, and see, e.g., col. 4, para. 60-64) (Emphasis added).

Applicants submit that "automatically *selecting for storage* desired digital data content *from the received blanket transmitted digital data content* according to predetermined criteria based on the popularity of the digital data content," as recited in claim 57 as amended, is patentably distinct from *selecting content for broadcast* such as described in Salganicoff. Accordingly, Applicants respectfully request reconsideration of the rejection.

Claims 60 – 64 depend from claim 57. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 57, dependent claims 60 – 64 are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be reconsidered.

New independent claims 146 and 152 contain analogous recitations relating to the automatic selection for local storage of digital data content according to predetermined criteria based on the popularity of the digital data content. Thus for

at least the reasons explained above, Applicants respectfully submit that claims 146 and 152 are patentably defined over the cited art.

New claims 147-151 depend, either directly or indirectly, from claim 146. New claims 153-157 depend, either directly or indirectly, from claim 152. Applicants respectfully submit that for at least the reasons explained above with respect to independent claims 146 and 152, dependent claims 147-151 and 153-157 are patentably defined over the cited art.

Conclusion

As explained above, Applicants submit that claims 57 and 60 – 64, which currently stand rejected in the Application, and new claims 147 – 157 are patentably defined over the cited art. The Examiner is respectfully urged to reconsider the Application. Favorable consideration and passage to issue of the application is earnestly solicited. If the Examiner should, however, find the claims as presented herein are not allowable for any reason or if the Examiner has any questions, comments, or suggestions that would expedite the prosecution of the present case, the Applicants undersigned representative would sincerely welcome a telephone conference at (206) 903-2475.

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